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DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-819]

Certain Pasta from Italy; Final Results of Countervailing Duty Administrative Review; 2010

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On August 1, 2012, the Department of Commerce (the “Department”) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2010, through December 31, 2010.

We received no comments on those preliminary results and we continue to determine that Molino e Pastificio Tomasello S.p.A. (“Tomasello”) received countervailable subsidies during the period of review.

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Joseph Shuler, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-1293.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary results of this administrative review on August 1, 2012. See Certain Pasta From Italy: Preliminary Results of the 15th (2010) Countervailing Duty Administrative Review and Rescission, In Part, 77 FR 45582 (August 1, 2012) (“Preliminary Results”). We invited interested parties to file comments following the release of the Preliminary Results. No comments were received.

Period of Review

The period for which we are measuring subsidies is January 1, 2010, through December 31, 2010.

Cerification of Organic Pasta

As discussed further under “Scope of the Order,” pasta from Italy that is certified as organic by European Union authorized agents and accompanied by a U.S. Department of Agriculture’s National Organic Program import certificate is excluded from the order.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are certified by a European Union authorized body and accompanied by a National Organic Program import certificate for organic products. See Memorandum from Yasmin Nair to Susan Kuhbach, entitled “Recognition of EU Organic Certifying Agents for Certifying Organic Pasta from Italy,” dated October 10, 2012, which is on file in the Department’s CRU. Pursuant to the Department’s May 12, 2011 changed circumstances review, effective January 1, 2009, gluten-free pasta is also excluded from the scope of the countervailing duty order. See Certain Pasta From Italy: Final Results of

Countervailing Duty Changed Circumstances Review and Revocation, In Part, 76 FR 27634 (May 12, 2011).

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (“the Act”), provide that the Department shall apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

As explained in our Preliminary Results, we find that the Government of Italy (“GOI”) failed to respond to our request for usage information regarding Measure 3.14 of the POR Sicilia 2000/2006. Therefore, consistent with section 776(a)(2)(B) of the Act, we have relied on facts otherwise available. Furthermore, because the GOI failed to provide this information, which was in its possession, we determine that the GOI did not act to the best of its ability. Consequently, an adverse inference is warranted in accordance with section 776(b) of the Act. As adverse facts

available, we determine that the assistance received by Tomasello under Measure 3.14 of the POR Sicilia 2000/2006 is specific within the meaning of section 771(5A) of the Act. See Preliminary Results, 77 FR at 45585.

Final Results of Review

We have made no changes to our findings announced in the Preliminary Results. See Preliminary Results, 77 FR at 45586; see also Memorandum from Joseph Shuler, International Trade Analyst, to the File, “2010 Preliminary Results Calculation Memorandum for Molino e Pastificio Tomasello, S.p.A.,” dated July 24, 2012.

For the period January 1, 2010, through December 31, 2010, we find that the ad valorem net subsidy rate for Tomasello to be:

Producer/Exporter	Net Subsidy Rate
Molino e Pastificio Tomasello S.p.A.	2.49%

Assessment Rates

Consistent with 19 CFR 351.212(b), the Department intends to issue assessment instructions to U.S. Customs and Border Protection (“CBP”) fifteen days after the date of publication of these final results. For Tomasello, the Department will instruct CBP to assess countervailing duties at the net subsidy rate listed above.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A., and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l., which was revoked from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2010, and December 31, 2010, at the rates in effect at the time of entry.

Cash Deposit Instructions

For Tomasello, the Department intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above.

For all non-reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. The cash deposit rates for all companies not covered by this review are not changed by the results of this review.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

November 13, 2012 _____
Date

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